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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

JOSE MANUEL GARZA- CASTILLO,

Petitioner,

vs.

MELLODY NALLELY GUAJARDO-OCHOA,

Respondent.

2:10-cv-00359-LDG-LRL

**MOTION FOR ORDER IN LIEU OF
TEMPORARY VISA**

Respondent, Mellody Nallely Guajardo-Ochoa, seeks an Order in Lieu of Temporary Visa for her mother, Maria De Los Angeles Ochoa, allowing her entrance into the United States, specifically the State of Nevada, city of Las Vegas, in order to attend the hearings set before this Court concerning the minor child, V.J.G.

POINTS AND AUTHORITIES

I. FACTS

A hearing on Mellody's *Memorandum of Law in Support of Motion to Dismiss or Stay this Action*, was held in this matter on October 20, 2010. The court set an evidentiary hearing for January 18, 2011, at 9:00 a.m. The court also set aside January 19, and January 20, 2011, in the event more time is required.

At the hearing on October 20, 2010, the Court gave some guidance as to the issues it would like addressed at the evidentiary hearing. Among other things, the court requested that Mellody present witnesses for her Article 12 and Article 13 arguments.

Mellody's mother, Maria De Los Angeles Ochoa, is a witness with information on those points. Maria is a resident of Tamaulipas, Mexico, and does not have a current visa to enter the United States. Maria currently has an appointment with the Mexican Consulate on December 13,

2010, in order to attempt to obtain a visa to enter the U.S. to testify on the Mellody's behalf, but it is uncertain whether it would be granted, or if so in time to appear as requested for trial.

In prior Hague-related cases in this Court, the Court has seen fit to enter orders allowing border crossing, for transporting a minor child, or otherwise as required for the case. The same factors would appear to be in play as to a witness for an evidentiary hearing.

II. LEGAL ANALYSIS

A. This Court Should Issue an Order in Lieu of Temporary Visa

Under ICARA, largely unspecified "provisional remedies" are permitted. *See* 42 U.S.C. § 11604(b). Generally this is construed to give courts considerable latitude in ensuring their cases are heard on the merits, and their orders are carried into effect.

B. Article 7 of the Convention

Article 7 of the Convention requires a Court to:

. . . take all appropriate measures . . . (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures; . . .

Securing the attendance of a witness on the merits would appear to fall within this language. Mellody's mother is such a witness and must obtain legal entry to enter the U.S. to testify at the evidentiary hearing.

We cannot conceive of any legitimate reason why our request on this point would be opposed by Jose, and we would likewise not oppose his efforts to secure the attendance of such witnesses as he believes relevant and necessary to the proceedings.

1 **III. CONCLUSION**

2 Mellody respectfully requests this Court enter the following orders:

- 3 1. Sign an Order in Lieu of Temporary Visa for Mellody's mother.
- 4 2. For any further relief this Court deems proper and just.

5 **DATED** this 8th day of December, 2010.

6

7 Respectfully Submitted By:

8 WILLICK LAW GROUP

9 Dated this 14 day of December, 2010

10 IT IS SO ORDERED

11 _____
12 LLOYD D. GEORGE
13 UNITED STATES DISTRICT JUDGE

14 /s/ Marshal S. Willick
15 MARSHAL S. WILLICK, ESQ.
16 Nevada Bar No. 002515
17 3591 East Bonanza Road, Suite 200
18 Las Vegas, Nevada 89110-2101
19 Attorneys for Respondent

20 **CERTIFICATE OF SERVICE**

21 I hereby certify service of the foregoing *Motion for Order in Lieu of Temporary Visa*, was

22 made on the 8th day of December, 2010, pursuant to the courts CM/ECF filing system to all counsel

23 of record and parties listed:

24 Anthony P. Troiani, Esq.
25 611 E. Washington Street
26 Brownsville, Texas 78520

27 Kirby P. Wells, Esq.
28 6900 Westcliff Dr., #710
 Las Vegas, Nevada 89145
 Attorneys for Petitioner

29 A courtesy copy was also sent via facsimile to (956) 541-9174 and (702) 341-8527

30 /s/ Deisy Martinez-Viera
31 Employee of the WILLICK LAW GROUP